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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/650,008

08/26/2003

David B. Dwyer

H0004368

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7590

06/02/2006

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EXAMINER

LUU, MATTHEW

ART UNIT

PAPER NUMBER

3663

DATE MAILED: 06/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/650,008

Applicant(s)

DWYER, DAVID B.

Examiner

LUU MATTHEW

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Deker et al (6,181,987).

The statements of intended use or field of use, "operable to", "adapted to", or "capable of" clause are essentially method limitations or statements of intended or desired use. Thus, these claims as well as other statements of intended use do not serve to patentably distinguish the claimed structure over that of the reference. See *In re Pearson*, 181 USPQ 641; *In re Yanush*, 177 USPQ 705; *In re Finsterwalder*, 168 USPQ 530; *In re Casey*, 512 USPQ 235; *In re Otto*, 136 USPQ 458; *Ex parte Masham*, 2 USPQ 2nd 1647.

See MPEP 2114:

"A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from the prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ 2nd 1647.

Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than functions. In re Danly, 120 USPQ 528, 531.

Apparatus claims cover what a device is not what a device does. Hewlett-Packard Co. v. Bausch & Lomb Inc., 15 USPQ 2nd 1525, 1528."

As set forth in MPEP 2115, a recitation in a claim to the material or article worked upon does not serve to limit an apparatus claim.

Regarding claim 1, Deker discloses (Figs. 1 and 2) an aircraft flight management display system for displaying air traffic control, the system comprising:

a processor (computer 2) adapted to receive (i) data representative of a current aircraft flight plan (Column 4, line 36 to column 5, line 13); (ii) since the textual window (28) displays textual information which relate to landing conditions or regulatory constraints such as permitted category of approach, etc., (column 6, lines 57-65), it is inherent that the processor (computer 2) can receive air traffic control clearance messages; it is inherent that the processor (computer 2) can also supply one flight plan display commands (Fig. 3, screen 33) and one clearance message display commands (Fig. 2, screen 26, Landing command) (Column 7, line 39 to column 8, line 35).

Deker further discloses (Figs. 1 and 3) a display (terminal 4) coupled to received the flight plan display commands (FPLNS) and the clearance message display commands to simultaneously display (i) one image representative of the current aircraft flight plan and (ii) the textual air traffic clearance messages (Column 7, lines 19-55).

Regarding claim 2, it is inherent that the display (terminal 4) can “operable” to display one image representative of a modified aircraft flight plan, when the textual air traffic clearance message indicates the current aircraft flight plan should be modified (Column 7, lines 39-55).

Regarding claim 3, Deker further discloses (Fig. 1) a user interface (touch display unit 13) configured to receive user input (Column 3, lines 61-64); and it is inherent that this user interface (13) “operable” to supply one clearance message user response signals and further “operable” to transmit a response to the displayed textual air traffic control message (Column 4, lines 3-48).

Regarding claim 4, Deker discloses (Fig. 3) the user interface (13) is further “operable” to supply one more flight plan modification signals (MODIFY FPLN); and

The processor (computer 2) is further inherently “operable” to transmit a textual signal representative of flight plan modification (Column 7, lines 39-55).

Regarding claim 5, the processor (2) is inherently “operable” to supply flight plan modification display; and

the display (Fig. 3) is inherently display one image representative of the modified flight plan (screen 35 is the representative of the current aircraft flight plan (active flight plan) and the modified flight plan (selected flight plan)) (Column 5, lines 5-13 and Column 7, lines 39-55).

Regarding claim 6, Deker discloses (Fig. 3) the display is inherently “operable” to simultaneously display the images (screen 35) representative of the current aircraft flight plan (active flight plan) and the modified flight plan (selected flight plan) (Column 7, lines 50-53).

Regarding claim 7, it is inherent that the processor (computer 2) is “operable” to automatically update the current flight plan consistent with the transmitted response to the displayed air traffic control message (Column 7, lines 39-53).

Regarding claim 8, Deker further discloses (Figs. 3 and 4) the display is inherently “operable” to selectively display a user interface filed (BASIS, DIV, COMPARE, EXPLAIN, AVOID) that allows a user (the pilot) to respond to the displayed textual traffic control message via the user interface (Column 6, lines 27-49; and column 8, lines 1-19).

Regarding claim 9, Deker further discloses (Fig. 1) a user interface (touch display unit 13) configured to receive user input (Column 3, lines 61-64); and it is inherent that this user interface (13) “operable” to supply one flight plan modification command signals (MODIFY FPLN); and

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wherein the processor (computer 2) is further inherently "operable" to modify flight plan display commands and one clearance message display commands (Column 7, lines 39-53); and

wherein the display (Fig. 3) is inherently "operable" to simultaneously display the images (screen 35) representative of the current aircraft flight plan (active flight plan) and the modified flight plan (selected flight plan) (Column 7, lines 50-53).

Regarding claim 10, Deker discloses (Fig. 1) a navigation database (3 and 16).

Regarding claim 11, Deker further discloses (Figs. 1-4) avionics data (Column 7, lines 1-15); wherein the display (Fig. 3) is inherently "operable" to simultaneously display the images (screen 35) representative of the current aircraft flight plan (active flight plan) and the modified flight plan (selected flight plan) (Column 7, lines 50-53).

Regarding claim 12, Deker teaches one of the image representative of the current flight plan is a lateral map image (navigation map) (Column 4, line 53 to column 5, line 3).

Response to Arguments

Applicant's arguments filed March 20, 2006 have been fully considered but they are not persuasive.

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Applicant argues, at pages 5-6, by alleging that the terms such as “operable to”, “adapted to”, and “capable of” are not the statements of intended use. However, the examiner respectfully disagrees.

The claim limitation that employ phrases of the type “adapted to”, “capable of”, “sufficient to”, and for” doing something are typical of claim limitations, which may not distinguish over the prior art. It has been held that the recitation that an element is “adapted to” perform or is “capable of” performing a function is not a positive limitation, but only requires the ability to so perform.

Furthermore, if the prior art fails to discuss the intended use and the examiner has a basis for asserting that prior art product is “capable of” performing in the claimed manner, the claims should be rejected.

“The recitation of a new intended use for an old product does not make a claim to that old product patentable.” *In re Schreiber*, 44 USPQ 2nd 1429 (Fed. Cir. 1977).

The statements of intended use or field of use, “operable to”, “adapted to”, or “capable of” clause are essentially method limitations or statements of intended or desired use. Thus, these claims as well as other statements of intended use do not serve to patentably distinguish the claimed structure over that of the reference. See *In re Pearson*, 181 USPQ 641; *In re Yanush*, 177 USPQ 705; *In*

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re Finsterwalder, 168 USPQ 530; In re Casey, 512 USPQ 235; In re Otto, 136 USPQ 458; Ex parte Masham, 2 USPQ 2nd 1647.

Applicant argues, at page 6, second paragraph, by asserting that Deker et al. fails to teach the invention of claim 1. Examiner respectfully disagrees.

Regarding claim 1, Deker discloses (Figs. 1 and 2) an aircraft flight management display system for displaying air traffic control, the system comprising:

a processor (computer 2) adapted to receive (i) data representative of a current aircraft flight plan (Column 4, line 36 to column 5, line 13); (ii) since the textual window (28) displays textual information which relate to landing conditions or regulatory constraints such as permitted category of approach, etc., (column 6, lines 57-65), it is inherent that the processor (computer 2) can receive air traffic control clearance messages; it is inherent that the processor (computer 2) can also supply one flight plan display commands (Fig. 3, screen 33) and one clearance message display commands (Fig. 2, screen 26, Landing command) (Column 7, line 39 to column 8, line 35).

Deker further discloses (Figs. 1 and 3) a display (terminal 4) coupled to received the flight plan display commands (FPLNS) and the clearance message display commands to simultaneously display (i) one image representative of the current aircraft flight plan and (ii) the textual air traffic clearance messages (Column 7, lines 19-55).

Deker also mentions that the air traffic control information such as "air traffic control in the area of the airport of destination is out of service or congested" being stored in the mass storage unit (3) (Column 4, lines 19-21 and 27).

Deker further teaches, at column 5, lines 5-13,

"If the pilot, starting from the screen 21, presses the key DIV for determining a flight plan towards a diversion airport, the screen 24 is displayed, and he or she is asked to define the cause of the diversion, if it is not known to the computer 2, as well as the criteria of selection of the new flight plan. This screen 24 is also displayed when the computer has received a message, by means of the aircraft bus 5, about an event requiring a diversion, the message being then displayed in the message zone of the textual window 28 of the screen 24."

Therefore, based on the above teachings, the textual message received by the computer for controlling the diversion of the aircraft and providing a new flight plan for the aircraft can be considered as "the air traffic control clearance messages".

Furthermore, since the textual window (28) displays textual information which relate to landing conditions or regulatory constraints such as permitted category of approach, etc., (column 6, lines 57-65), it is inherent that the processor (computer 2) can receive air traffic control clearance messages.

Deker discloses (Fig. 3) the display is inherently "operable" to simultaneously display the images (screen 35) representative of the current aircraft flight plan (active flight plan) and the modified flight plan (selected flight plan) (Column 7, lines 50-53).

Furthermore, it is inherent that the display (terminal 4) can "operable" to display one image representative of a modified aircraft flight plan, when the textual air traffic clearance message indicates the current aircraft flight plan should be modified (Column 7, lines 39-55). Therefore, the modified aircraft flight plan can also be considered as "the air traffic control clearance messages".

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to LUU MATTHEW whose telephone number is (571) 272-7663. The examiner can normally be reached on Flexible Schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JACK KEITH can be reached on (571) 272-7663. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

M. Luu

A handwritten signature in black ink, appearing to read 'Matthew Luu', with a large, stylized initial 'M'.

MATTHEW LUU
PRIMARY EXAMINER